

DEC 14 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JORGE LUIS SOTO-GALAVIZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74274

Agency No. A95-310-245

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Jorge Luis Soto-Galaviz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider its previous order affirming without opinion an immigration judge's ("IJ") denial of his application for cancellation of removal. We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 8 U.S.C. § 1252. We review for abuse of discretion. *Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005). We grant the petition for review, and remand.

Soto-Galaviz filed his motion to reconsider within thirty days of the BIA's order denying cancellation, and within his thirty-day voluntary departure period. The BIA denied the motion to reconsider on the ground that Soto-Galaviz failed to depart within his voluntary departure period. This court recently held that a timely filed motion to reconsider automatically tolls the voluntary departure period. *See Barroso v. Gonzales*, 2005 WL 3079103 *1. Accordingly, we grant the petition for review and remand for the BIA to consider the merits of Soto-Galaviz's motion to reconsider.

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITION FOR REVIEW GRANTED; REMANDED.